

RESOLUTION NO.

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit Amendment to use certain real property described herein to modify a previously approved condition of approval requiring dedication of an easement for right-of-way purposes.

FILE NO. CPA01-057-01

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 10, 2003, an application (File No. CPA01-057-01) was filed for a Conditional Use Permit Amendment for the purpose of deletion of modification of a condition of approval contained within the original Conditional Use Permit (File No. CP01-057) for the site requiring dedication of an easement for right-of-way purposes, on that certain real property (hereinafter referred to as "subject property"), situate in the CG Zoning District, located on the southeast corner of Saratoga Avenue and Campbell Avenue (1704 Saratoga Avenue), San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, all of the foregoing conditions have been met, and the Commission hereby

1. This site has a designation of Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 0.7-gross-acre parcel in the CG Commercial General Zoning District.
3. The project site is currently developed with a gasoline service station.
4. The previously approved project (File No. CP01-057) consisted of: A) demolition of the existing building, B) construction of a new 2,100-square-foot gasoline service station building and car wash facility, and C) 24-hour operation of the service station and operating hours of 7:00 AM to 10:00 PM for the car wash.
5. Car washes and 24-hour land uses are conditional uses in the City's commercial zoning districts.
6. A portion of the property currently extends under the existing street improvements on Saratoga Avenue and Campbell Avenue.
7. A condition of approval in the previously approved Conditional Use Permit requires dedication of right-of-way along both of the project's street frontages prior to the issuance of a Public Works clearance.
8. The required dedication would allow the City to gain access to those portions of the site that currently underlie the existing public thoroughfare, for purposes of public access, maintenance, or street improvements
9. The proposed amendment to the previously approved CUP is modification of a Public Works condition of approval concerning timing and manner of dedication of an easement for public access over a portion of the property that currently extends under the existing adjacent street improvements.
10. The previously approved project was determined to be exempt from environmental review.
11. The proposed permit amendment does not affect the previous determination of exemption from environmental review.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit Amendment to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit, except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit Amendment shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-

this permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance to Plans.** Development and use of the site shall conform to the approved development plans entitled "Chevron," last revised February 11, 2003, on file with the Department of Planning Building and Code Enforcement under Conditional Use Permit file no. CP01-057 (and all subsequent Permit Adjustments).
2. **Implementation.** This Conditional Use Permit Amendment may only be implemented in conjunction with the full and complete implementation of the previously approved Conditional Use Permit, File No. CP01-057 except as amended.
3. **Previous Conditions.** All of the conditions of approval from the previously approved Conditional Use Permit shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Amendment.
4. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
5. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-11872) to the satisfaction of the Director of Public Works:
 - a. **Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. **Geology:** A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - c. **Undergrounding:**

e. **Street Improvements:**

- 1) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
- 2) Close unused driveway cut(s).
- 3) All driveway widths shall be a maximum of 32 feet.
- 4) The Applicant shall convey or cause to be conveyed to the City the street right-of-way easement adjacent to Campbell Avenue and Saratoga Avenue or obtain a court decree that establishes City ownership of title to the street easement. The property currently extends into both streets.
- 5) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- f. **Minor Improvement Permit:** The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Amendment, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Amendment. The date of adoption is the date the Resolution granting this Amendment is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit Amendment may be revoked, suspended or modified by the Planning Commission, or by the City Council on

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

ADOPTED and issued this 10th day of March, 2004, by the following vote:

AYES: LEVY, CAMPOS, DHILLON, PLATTEN, ZAMORA, ZITO

NOES: NONE

ABSENT: JAMES

DISQUALIFIED: NONE

Chairperson

ATTEST:

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.